

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 136

BY TRANSPORTATION AND DEFENSE COMMITTEE

AN ACT

RELATING TO MOTOR FUEL TAX AND TRANSPORTATION; AMENDING SECTION 40-701, IDAHO CODE, TO REVISE APPORTIONMENT FROM THE HIGHWAY DISTRIBUTION ACCOUNT AND A TECHNICAL CORRECTION; AMENDING CHAPTER 7, TITLE 40, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 40-701A, IDAHO CODE, TO PROVIDE FOR THE HIGHWAY MAINTENANCE, PRESERVATION AND RESTORATION FUND, TO PROVIDE FOR MONEYS INTO THE FUND, TO PROVIDE FOR INTEREST, TO PROVIDE FOR APPORTIONMENT OF FUND MONEYS, TO PROVIDE FOR CONTINUOUS APPROPRIATION AND TO PROVIDE FOR EXPENDITURES; AND AMENDING SECTION 63-2402, IDAHO CODE, TO REVISE THE TAX UPON MOTOR FUEL.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 40-701, Idaho Code, be, and the same is hereby amended to read as follows:

40-701. HIGHWAY DISTRIBUTION ACCOUNT – APPORTIONMENT. (1) There is established in the state treasury an account known as the "Highway Distribution Account," to which shall be credited:

- (a) Moneys as provided by sections 63-2412(1)(e)4, and 63-2418(3), Idaho Code;
- (b) All moneys collected by the department, their agents and vendors, and county assessors and sheriffs, under the provisions of title 49, Idaho Code, except as otherwise specifically provided for; and

- (c) All other moneys as may be provided by law.

(2) The highway distribution account shall be apportioned as follows:

- (a) An amount equal to the increase in motor fuel tax exceeding twenty-five cents (25¢) per gallon shall be deposited to the highway maintenance, preservation and restoration fund established in section 40-701A, Idaho Code.

- (b) Thirty-eight percent (38%) to local units of government as provided in section 40-709, Idaho Code;

- (~~b~~c) Fifty-seven percent (57%) to the state highway account established in section 40-702, Idaho Code; and

- (~~e~~d) Five percent (5%) to the law enforcement account, established in section 67-2914, Idaho Code. The state controller shall cause the remittance of the moneys apportioned to local units of government not later than January 25, April 25, July 25 and October 25 of each year, and to the state highway account and the law enforcement account as the moneys become available to the highway distribution account.

- (3) Interest earned on the investment of idle moneys in the highway distribution account shall be paid to the highway distribution account.

(4) All idle moneys in the dedicated highway trust or asset accounts or subaccounts established from highway user revenues, reimbursements, fees or permits shall be invested by the state treasurer in the same manner as provided under section 67-1210, Idaho Code, with respect to other surplus or idle moneys in the state treasury. Interest earned on the investments shall be returned to the various highway trust or asset accounts and subaccounts.

SECTION 2. That Chapter 7, Title 40, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 40-701A, Idaho Code, and to read as follows:

40-701A. ESTABLISHMENT OF HIGHWAY MAINTENANCE, PRESERVATION AND RESTORATION FUND – APPORTIONMENT. (1) There is hereby established in the state treasury a fund known as the "Highway Maintenance, Preservation and Restoration Fund," to which shall be credited:

- (a) Moneys as provided by section 40-701(2)(a), Idaho Code; and
 - (b) All other moneys as may be provided by law.
 - (c) Interest earned on the investment of idle moneys in the highway maintenance, preservation and restoration fund shall be paid to the fund.
- (2) Moneys in the highway maintenance, preservation and restoration fund shall be apportioned as follows:

- (a) Forty percent (40%) to local units of government as provided in section 40-709, Idaho Code; and
 - (b) Sixty percent (60%) to remain in the highway maintenance, preservation and restoration fund established in this section for expenditure by the Idaho transportation department in accord with the provisions of subsection (3) of this section.
- (3) Moneys in the highway maintenance, preservation and restoration fund as provided in subsection (2)(b) of this section, are hereby continuously appropriated to the Idaho transportation department. Expenditures of moneys from the fund by the department shall be made only for the maintenance, preservation and restoration of existing state highways that are in use by motorists of this state as of the effective date of this act. In no event shall expenditures be made from this dedicated fund for capacity expansion projects. Provided, however, that no moneys shall be expended from such fund unless and until the department has implemented a statewide pavement management system or similar management tool that is efficient, effective and widely accepted in the trade or practice for coordinating a statewide system for the management of pavement maintenance.

SECTION 3. That Section 63-2402, Idaho Code, be, and the same is hereby amended to read as follows:

63-2402. IMPOSITION OF TAX UPON MOTOR FUEL. (1) A tax is hereby imposed upon the distributor who receives motor fuel in this state. The legal incidence of the tax imposed under this section is borne by the distributor. The tax becomes due and payable upon receipt of the motor fuel in this state by the distributor unless such tax liability has previously accrued to another distributor pursuant to this section. The tax shall be imposed without regard to whether use is on a governmental basis or otherwise, unless exempted by this chapter.

(2)(a) The tax imposed in this section shall be at the rate of ~~twenty-five~~ thirty cents (2530¢) per gallon of motor fuel received. This tax shall be subject to the exemptions, deductions and refunds set forth in this chapter.

(3) Nothing in this chapter shall prohibit the distributor who is liable for payment of the tax imposed under subsection (1) of this section from including as part of the selling price an amount equal to such tax on motor fuels sold or delivered by such distributor; provided however, that nothing in this chapter shall be deemed to impose tax liability on any person to whom such fuel is sold or delivered except as provided in subsection (6) of this section.

(4) Any person coming into this state in a motor vehicle may transport in the manufacturer's original tank of that vehicle, for his own use only, not more than thirty (30) gallons of motor fuel for the purpose of operating that motor vehicle, without complying with the provisions of this chapter.

(5) The tax imposed in this section does not apply to:

(a) Special fuels that have been dyed at a refinery or terminal under the provisions of 26 U.S.C. section 4082 and regulations adopted thereunder, or under the clean air act and regulations adopted thereunder except as provided in section 63-2425, Idaho Code; or

(b) Special fuel dispensed into a motor vehicle which uses gaseous special fuels and which displays a valid gaseous special fuels permit under section 63-2424, Idaho Code; or

(c) Special fuels that are gaseous special fuels, as defined in section 63-2401, Idaho Code, except that part thereof that is delivered into the fuel supply tank or tanks of a motor vehicle; or

(d) Aircraft engine fuel subject to tax under section 63-2408, Idaho Code.

(6) Should the distributor of first receipt be exempt from imposition of the tax as a matter of federal law, by virtue of its status as a federally-recognized Indian tribe or member of such tribe, such distributor shall not bear the tax's legal incidence and must pass the tax through as part of the selling price of the fuel. Such distributor shall retain the administrative obligation to remit the tax, and such obligation shall accrue upon receipt in accordance with subsection (1) of this section. Should a retailer otherwise subject to the tax be exempt from imposition of the tax as a matter of federal law, by virtue of its status as a federally-recognized Indian tribe or member of such tribe, the retailer shall not bear the tax's legal incidence and must pass the tax through as part of the selling price of the fuel to the consumer, unless such consumer is exempt from imposition of the tax as a matter of federal law, by virtue of its status as a federally-recognized Indian tribe or membership in such tribe, and the retailer shall be entitled to claim a credit against taxes otherwise due and owing under this chapter or a tax refund, together with interest, attributable to the fuel purchased by such consumer.